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8 Attorneys for Defendant
RAMON J. ALCANTAR individually and in his capacity as
9 a police officer for the City of Oakland

10
11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 MIGUEL ORTEGA, BENJAMIN ORTEGA,
a minor, by and through his Guardian Ad
14 Litem, ANA ROSA ORTEGA

15 Plaintiff,

16 v.

17 CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, in his
18 capacity as the Police Chief of the City of
Oakland, RAMON J. ALCANTAR
19 individually and in his capacity as a police
officer for the City of Oakland, and DOES 1
20 THROUGH 200, inclusive,

21 Defendants.

No. C-07-02659 JCS

**DEFENDANT RAMON J. ALCANTAR'S
ANSWER TO SECOND AMENDED
COMPLAINT**

22
23 Defendant RAMON J. ALCANTAR individually and in his capacity as a police officer
24 for the City of Oakland (hereinafter "Alcantar"), hereby answers, objects, and otherwise
25 responds to the Second Amended Complaint on file herein as follows.

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I. INTRODUCTION

1. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

2. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

3. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

4. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

5. Alcantar admits that he acted under the color of state law. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, denies each and every remaining allegation contained herein.

6. Alcantar denies that there are policies or customs of the City of Oakland as alleged in this paragraph and further deny that his actions violated any constitutional rights of plaintiffs. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, denies each and every remaining allegation contained herein.

II. JURISDICTION

7. Alcantar denies that any unlawful acts or practices as alleged occurred. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and on that basis, denies each and every remaining allegation contained herein.

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1 8. Alcantar is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph and on that basis, denies each and every allegation
3 contained herein.

4 9. Alcantar is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations in this paragraph and on that basis, denies each and every allegation
6 contained herein.

7 10. Alcantar is without knowledge or information sufficient to form a belief as to the
8 truth of the allegations in this paragraph and on that basis, denies each and every allegation
9 contained herein.

10 11. Alcantar is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations in this paragraph and on that basis, denies each and every allegation
12 contained herein.

13 12. Alcantar admits that he is a police officer for the City of Oakland and that he acts
14 under the color of state law. Alcantar is without knowledge or information sufficient to form a
15 belief as to the truth of the remaining allegations in this paragraph and on that basis, denies each
16 and every remaining allegation contained herein.

17 13. Alcantar denies that plaintiffs were injured or damaged in any way. The
18 remaining portions of the paragraph contain statements and conclusions of law which do not
19 require a response herein.

20 14. Alcantar is without knowledge or information sufficient to form a belief as to the
21 truth of the allegations in this paragraph and on that basis, denies each and every allegation
22 contained herein.

23 **III. STATEMENT OF FACTS**

24 15. Alcantar is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations in this paragraph and on that basis, denies each and every allegation
26 contained herein.

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1 16. Alcantar is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations in this paragraph and on that basis, denies each and every allegation
3 contained herein.

4 17. Alcantar is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations in this paragraph and on that basis, denies each and every allegation
6 contained herein.

7 18. Alcantar admits that he acts under the color of state law. Alcantar is without
8 knowledge or information sufficient to form a belief as to the truth of the allegations in this
9 paragraph and on that basis, denies each and every allegation contained herein.

10 19. Alcantar denies that there are policies or customs of the City of Oakland as
11 alleged in this paragraph. Alcantar is without knowledge or information sufficient to form a
12 belief as to the truth of the allegations in this paragraph and on that basis, denies each and every
13 allegation contained herein.

14 IV. FIRST CAUSE OF ACTION

15 20. Alcantar incorporates herein his responses to the allegations contained in
16 paragraphs 1 through 19, as previously set forth.

17 21. Alcantar admits that the United States Constitution protects certain rights as set
18 forth in this paragraph. Alcantar further admits that he acts under the color of state law.
19 Alcantar denies the remaining allegations contained in this paragraph of the complaint.

20 22. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any
21 of his alleged acts.

22 V. SECOND CAUSE OF ACTION

23 23. Alcantar incorporates herein his responses to the allegations contained in
24 paragraphs 1 through 22, as previously set forth.

25 24. Alcantar denies the allegations contained in paragraph 24 of the complaint.

26 25. Alcantar denies the allegations contained in paragraph 25 of the complaint.

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VI. THIRD CAUSE OF ACTION

26. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 25, as previously set forth.

27. Alcantar denies the allegations contained in paragraph 27 of the complaint.

28. Alcantar denies the allegations contained in paragraph 28 of the complaint.

29. Alcantar denies the allegations contained in paragraph 29 of the complaint.

30. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts. Alcantar denies the remaining allegations set forth in this paragraph of the complaint.

VII. FOURTH CAUSE OF ACTION

31. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 30, as previously set forth.

32. Alcantar denies the allegations contained in paragraph 32 of the complaint.

33. Alcantar denies that he is liable under any theory or in any sum to plaintiffs. The remaining portions of the paragraph contain statements and conclusions of law not requiring a response from Alcantar.

34. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

VIII. FIFTH CAUSE OF ACTION

35. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 34, as previously set forth.

36. Alcantar denies the allegations contained in paragraph 36 of the complaint.

37. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

38. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

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IX. SIXTH CAUSE OF ACTION

39. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 38, as previously set forth.

40. Alcantar denies the allegations contained in paragraph 40 of the complaint, and further denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

41. Alcantar is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, denies each and every allegation contained herein.

42. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

X. SEVENTH CAUSE OF ACTION

43. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 42, as previously set forth.

44. Alcantar denies the allegations contained in paragraph 44 of the complaint, and further denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

45. Alcantar denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts and further denies that plaintiffs are entitled to any award of punitive damages.

XI. EIGHTH CAUSE OF ACTION

46. Alcantar incorporates herein their responses to the allegations contained in paragraphs 1 through 45, as previously set forth.

47. Alcantar admits that he has a duty of care in his capacity as a police officer to avoid causing unnecessary physical harm and emotional distress to citizens. Alcantar denies the remaining allegations contained in paragraph 47 of the complaint and further denies that plaintiffs suffered any injuries or damages as a result of any of his alleged acts.

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XII. NINTH CAUSE OF ACTION

48. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

49. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

50. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

51. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

52. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

53. Alcantar does not answer the allegations in the Ninth Cause of Action as it does not name this answering defendant. Alcantar does, however, join in Defendants City of Oakland, Oakland Police Department, Chief Wayne Tucker and Sergeant Bernard Ortiz's Motion to Strike the Ninth Cause of Action which is filed concurrently with this answer.

XIII. TENTH CAUSE OF ACTION

54. Alcantar incorporates herein his responses to the allegations contained in paragraphs 1 through 47, as previously set forth.

1 55. Alcantar denies the allegations contained in paragraph 55 of the complaint.

2 56. Alcantar denies the allegations contained in paragraph 56 of the complaint, and
3 further denies that plaintiffs suffered any injuries or damages as a result of any of his alleged
4 acts.

5 57. Alcantar denies the allegations contained in paragraph 57 of the complaint.

6 58. Alcantar denies that plaintiffs are entitled to either injunctive relief or an award of
7 attorneys' fees as alleged in paragraph 58 of the complaint.

8 **XIV. CLAIM REQUIREMENT**

9 59. This paragraph contains statements and conclusions of law not requiring a
10 response from the answering defendant.

11 **XV. JURY DEMAND**

12 60. This paragraph contains statements and conclusions of law not requiring a
13 response from the answering defendant.

14 **XVI. AFFIRMATIVE DEFENSES**

15 AS A FURTHER, FIRST, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
16 alleges that the complaint fails to state a claim upon which relief can be granted.

17 AS A FURTHER, SECOND, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
18 alleges, on information and belief, that plaintiffs did not exercise ordinary care, caution, or
19 prudence to avoid the alleged event and/or accident; consequently, the subsequent injuries or
20 damages, if any, sustained by plaintiffs were proximately caused by and contributed to by
21 plaintiffs' comparative negligence, and any damages they might otherwise be entitled to should
22 be proportionately reduced by the degree of plaintiffs' negligence.

23 AS A FURTHER, THIRD, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
24 alleges that the injuries and damages plaintiffs complain of resulted from the acts and/or
25 omissions of others, or acts of God, and without any fault on the part of the answering
26 defendant.

27 AS A FURTHER, FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
28 alleges that any party or individual who contributed to and/or caused the alleged injuries and

1 damages was not acting as its agent or with its knowledge or within the course and/or scope of
2 employment with defendant CITY OF OAKLAND.

3 AS A FURTHER, FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
4 alleges that, to the extent that plaintiffs may attempt to allege state claims, these are barred by all
5 applicable Government Code protections and immunities, including, but not limited to, sections
6 815 through 900. Said sections are pleaded as though fully set forth herein.

7 AS A FURTHER, SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
8 alleges that all of his actions were undertaken in good faith and with the reasonable belief that
9 such actions were valid, necessary, reasonable, lawful and constitutionally proper, entitling
10 Alcantar to the qualified immunity of good faith.

11 AS A FURTHER, SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
12 alleges that, if he, in any fashion, caused the injuries or damages alleged, although such liability
13 is expressly denied herein, his acts and/or omissions thereto were reasonable and privileged.

14 AS A FURTHER, EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
15 alleges, on information and belief, that plaintiffs failed to mitigate their damages.

16 AS A FURTHER, NINTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
17 alleges that, to the extent that plaintiffs allege or assert matters not contained in a legally
18 sufficient claim filed by them, this action is barred by the claims requirements set forth in
19 Government Code Section 905 et seq.

20 AS A FURTHER, TENTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
21 alleges that this action is barred, under Government Code § 945.6, by plaintiffs' failure to file
22 their action within six months after denial of their claim by the CITY OF OAKLAND.

23 AS A FURTHER, ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
24 Alcantar alleges that this action is barred by all applicable statutes of limitations.

25 AS A FURTHER, TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE, Alcantar
26 alleges that any force used in this instance was reasonable.

27 AS A FURTHER, THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
28 Alcantar alleges that any actions taken by the answering defendant were taken pursuant to a

1 lawful and valid policy of the CITY OF OAKLAND.

2 AS A FURTHER, FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
3 Alcantar alleges that plaintiffs caused the actions of which plaintiffs complain.

4 AS A FURTHER, FIFTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
5 Alcantar alleges that any actions taken against plaintiffs were pursuant to a lawful detention
6 and/or arrest.

7 AS A FURTHER, SIXTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
8 Alcantar alleges that any actions taken against plaintiffs were necessary to protect officer safety.

9 AS A FURTHER, SEVENTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE,
10 Alcantar alleges that plaintiffs improperly added the Ninth Cause of Action in the Second
11 Amended Complaint without the required leave of the Court and in violation of the Court's
12 order.

13 **XVII. PRAYER**

14 **WHEREFORE**, Alcantar prays that:

- 15 1. Plaintiffs take nothing by their Complaint;
16 2. Alcantar has judgment against Plaintiffs;
17 3. Alcantar be awarded his costs of suit; and
18 4. For such other and further relief as the Court may deem proper.

19 DATED: July 1, 2008

BURNHAM BROWN

20
21 By

JAMES Y. HIGA

Attorneys for Defendant

22 RAMON J. ALCANTAR individually and in his
23 capacity as a police officer for the City of
24 Oakland

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